2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

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Follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*: legal, technical and political elements required for the establishment and maintenance of a nuclear-weapon-free world

Working paper submitted by Costa Rica and Malaysia

Introduction

1. The purpose of this paper is to:

1.1 Build on the working paper entitled "Follow-Up to the International Court of Justice Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*" submitted to the 2000 and 2005 Non-Proliferation Treaty Review Conference (NPT/CONF.2010/MC.1/SB.1/WP.4 and NPT/CONF.2005/WP.41);

1.2 Reaffirm the obligation of States parties to the Non-Proliferation Treaty to pursue negotiations leading to complete nuclear disarmament, and the unequivocal undertaking by nuclear weapon States to accomplish the total elimination of their nuclear arsenals, made in 2000 to implement this obligation;

1.3 Urge the fulfilment of this obligation through the commencement of negotiations that would lead to the conclusion of the nuclear weapons convention — or a framework of mutually reinforcing instruments — prohibiting the development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons and providing for their elimination under strict and effective international control; and

1.4 Continue to explore the legal, technical and political elements required for a nuclear weapons convention or framework of instruments, and integrate this exploration into the development of a programme for action at the 2010 Review Conference of the Parties to the Non-Proliferation Treaty, encompassing and extending the practical steps agreed in 2000 for systematic and progressive efforts to implement article VI of the Treaty.

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Background

2. Regarding the obligation to achieve the elimination of nuclear weapons:

2.1 At the 1995 Review and Extension Conference, parties to the Non-Proliferation Treaty agreed to pursue systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons.

2.2 On 8 July 1996, the International Court of Justice delivered the advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons*, in which it concluded unanimously, inter alia, that "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law" and that "there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control".

2.3 It is significant that the opinion of the International Court of Justice affirmed that the obligation to negotiate for nuclear disarmament requires the following:

- Negotiations on complete nuclear disarmament, i.e. the complete abolition and elimination of nuclear weapons
- Negotiations to be not only pursued, but to be brought to a conclusion
- International control of the disarmament process

2.4 It is also significant that the International Court of Justice did not confine the disarmament obligations only to States parties to the Non-Proliferation Treaty, but rather that this is a universal obligation.

2.5 The 2000 Review Conference of the Parties to the Non-Proliferation Treaty affirmed "an unequivocal undertaking by the nuclear weapons States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament," to which all States parties are committed under article VI.

2.6 The 2000 Review Conference also called for "The engagement as soon as appropriate of all the nuclear weapons States in the process leading to the total elimination of the nuclear weapons", and began the process of considering some of the requirements for "the achievements and maintenance of a nuclear-weapon-free world", in particular "the development of the verification capabilities that will be required to provide assurance of compliance".

3. On the proposal for a nuclear weapons convention or framework of mutually reinforcing instruments:

3.1 The General Assembly of the United Nations has adopted the resolutions entitled "Follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*" since 1996, calling for the implementation of the advisory opinion through the commencement of multilateral negotiations leading to the early conclusions of a nuclear weapons convention.

3.2 The United Nations General Assembly has also adopted resolutions affirming that "a nuclear-weapon-free world will ultimately require the

underpinning of a universal and multilaterally negotiated legally binding instrument or a framework encompassing a mutually reinforcing set of instruments" (resolutions 55/33C of 20 November 2000 and 57/59 of 22 November 2002, entitled "Towards a nuclear-weapon-free world: the need for a new agenda").

4. The Non-Aligned Movement, at its Fifteenth Summit, held from 11 to 16 July 2009, emphasized "the necessity to start negotiations on a phased programme for the complete elimination of nuclear weapons with a specific framework of time including a nuclear weapons convention".

Model Nuclear Weapons Convention

5. In 1997, Costa Rica submitted to the Secretary-General of the United Nations the Model Nuclear Weapons Convention (A/C.1/52/7) drafted by an international consortium of lawyers, scientists and disarmament experts, setting forth the legal, technical and political issues that should be considered in order to obtain an actual nuclear weapons convention.

6. In 2007 Costa Rica submitted to the first session of the Preparatory Committee of the 2010 Review Conference of the Parties to the Non-Proliferation Treaty an updated Model Nuclear Weapons Convention (NPT/CONF.2010/PC.1/WP.17) to assist the deliberative process for the implementation of United Nations General Assembly resolutions entitled "Follow-up to the advisory opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*".

7. The Model Nuclear Weapons Convention can be considered together with the working papers on the Non-Proliferation Treaty submitted in 2005 and 2000, which:

7.1 Underlined the unanimous conclusion of the International Court of Justice that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control;

7.2 Called on States parties to commence multilateral negotiations leading to the conclusion of a nuclear weapons convention and to invite those States that have not acceded to the Non-Proliferation Treaty to join in such negotiations; and

7.3 Called on States parties to agree to give consideration to the legal, technical and political elements required for a nuclear weapons convention or framework convention.

8. The practical steps agreed by States parties in 2000 for systematic and progressive efforts to implement article VI of the Treaty included a number of legal, technical and political steps, which could provide a basis for some of the elements required for a nuclear-weapon-free world.

9. In addition, a number of working papers submitted to the Preparatory Committee meetings for the 2010 Review Conference provide a deeper exploration of specific steps agreed in 2000 and other steps relevant to the achievements and maintenance of a nuclear-weapon-free world.

Consideration of the legal, technical and political elements required for a nuclear weapons convention or framework of instruments

10. A comprehensive overview of the legal, technical and political requirements for a nuclear-weapon-free world would be able to affirm such elements that already exist, assess those that are currently being developed, evaluate and link those that have been proposed, and identify additional elements that would also be required. These elements may include:

10.1 Non-discriminatory general obligations, applicable to States and non-States actors, prohibiting the acquisition, development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons;

10.2 Interim control, protection and accounting of nuclear weapons and fissile material holdings;

10.3 Phases and steps for the systematic and progressive destruction of all nuclear warheads and their delivery vehicles;

10.4 Mechanisms for verifying the abolition and prohibition of nuclear weapons, including, inter alia:

- Agreements on data sharing with States and existing agencies;
- An international monitoring system comprising facilities and systems for monitoring by photography, radionuclide sampling, on-site and off-site sensors and other data collection systems;
- Consultation and clarification procedures;
- On-site inspections;
- A registry including information gained from State declarations, the international monitoring system, national technical means, inspections, other international organizations, non-governmental organizations and publicly available sources;

10.5 Mechanisms for ensuring compliance, including, inter alia:

- Technical assistance regarding the destruction of nuclear weapons, delivery systems and facilities;
- Procedures for national implementation;
- Dispute resolution procedures;
- Penalties for non-compliance;
- Recourse to the United Nations Security Council, United Nations General Assembly and International Court of Justice for further action;

10.6 An international organization to coordinate verification, implementation and enforcement under strict and effective international control; and

10.7 Disarmament and non-proliferation education to ensure that key sectors of society understand the importance of achieving and maintaining a nuclear-weapon-free world, and how they can contribute to this goal.

11. As noted above, some of these elements may already be in existence, albeit in an underdeveloped form or with limited application. This includes, for example, disarmament measures applied to a limited number of weapons, or fissile material controls and delivery system controls applied only to certain countries. Examples include mechanisms and controls established by the nuclear-weapon-free-zone treaties, the International Atomic Energy Agency (IAEA), the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) and follow-up agreement to the Strategic Arms Reduction Treaty (START). Consideration of the elements required for the complete prohibition and the elimination of nuclear weapons would enable gaps to be identified, preparatory work undertaken and further steps completed.

Negotiations towards a nuclear weapons convention or a framework of instruments for the complete abolition and elimination of nuclear weapons

12. For nuclear disarmament to occur, security for all will need to be maintained and enhanced. Thus, there are a number of political issues, in addition to those outlined above, that will need to be addressed. These include, inter alia, building confidence in each of the phased disarmament steps in order to proceed to the next steps, how to diminish the role of nuclear weapons in security doctrines pending nuclear abolition, building regional and international security without nuclear deterrence, the development of security assurances, achieving a balance between transparency and protection of sensitive information, the role of societal verification, how to build individual responsibility and protection into the disarmament process while respecting State sovereignty, and how to deal with delivery systems and dual-use materials.

13. In addition, there are a number of economic and environmental issues that will need to be addressed, including the possible need for financial assistance for disarmament and the harmonizing of environmental standards for destroying weapon systems and disposing of fissile materials.

14. While it is important to concentrate international attention on concrete steps towards nuclear disarmament, which are achievable in the short term, it is also important to simultaneously consider the requirements for a comprehensive nuclear disarmament regime in order to develop an international understanding of the final destination of nuclear disarmament steps. Hence, the best way to address these issues and to make progress towards complete nuclear disarmament is to commence negotiations within an incremental comprehensive framework. Such an approach would allow all relevant issues to be raised and addressed, and would facilitate the completion of disarmament steps in areas where agreements can be reached within a short to medium timeframe. More difficult issues requiring more complex arrangements would be resolved through continuing negotiations and achieved in subsequent steps. This is what is envisaged in the call for the commencement of negotiations leading to the conclusion of a nuclear weapons convention or a framework of instruments for the complete abolition and elimination of nuclear weapons.

Conclusion

15. States parties meeting at the 2010 Review Conference of the Parties to the Non-Proliferation Treaty are encouraged to develop a programme of action based on the programme agreed at the 2000 Review Conference and the legal, technical and political elements outlined in this paper required for the establishment and maintenance of a nuclear-weapon-free world.

Recommendations

16. Following are recommendations:

(a) States parties agree to undertake the preparatory process to explore the legal, technical and political elements required for a nuclear weapons Convention or a framework of instruments; and

(b) States parties agree to commence multilateral negotiations leading to the conclusion of a nuclear weapons Convention and invite those States that have not acceded to the Treaty on the Non-Proliferation of Nuclear Weapons to join in such negotiations.